

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
SOPHIA DIOGENE,

Index No: 727007/2023

Plaintiff,

VERIFIED ANSWER

-against-

JESSICA KAGAN D.D.S. and
NASSAU-QUEENS ENDODONTICS PC,

Defendants.

-----X

The defendant NASSAU-QUEENS ENDODONTICS PC by its attorneys, MORRIS DUFFY ALONSO FALEY & PITCOFF, upon information and belief, answers the plaintiff's Complaint herein as follows:

**ANSWERING THE FIRST CAUSE OF ACTION ON
BEHALF OF THE PLAINTIFF SOPHIA DIOGENE**

1. Denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs or subdivisions of the Complaint designated "FIRST"

2. Denies each and every allegation contained in the paragraphs or subdivisions of the Complaint designated "SECOND" in the form alleged except admits that JESSICA KAGAN, D.D.S. was and still is a duly licensed dentist in the State of New York.

3. Denies each and every allegation contained in the paragraphs or subdivisions of the Complaint designated "THIRD" in the form alleged except admits that NASSAU-QUEENS ENDODONTICS P.C. was and still is a domestic professional corporation duly organized and existing pursuant to the laws of the State of New York.

4. Denies each and every allegation contained in the paragraphs or subdivisions of the Complaint designated "FOURTH" in the form alleged except admits that NASSAU-QUEENS ENDODONTICS P.C. was and still is a domestic professional corporation that provided dental care and treatment to plaintiff SOPHIA DIOGENE at certain discrete times and respectfully refers all questions of law to this Honorable Court.

5. Denies each and every allegation contained in the paragraphs or subdivisions of the Complaint designated "FIFTH" in the form alleged except admits that NASSAU-QUEENS ENDODONTICS P.C. was and still is a domestic professional corporation that provided dental care and treatment to plaintiff SOPHIA DIOGENE at certain discrete times and respectfully refers all questions of law to this Honorable Court.

6. Denies each and every allegation contained in the paragraphs or subdivisions of the Complaint designated "SIXTH" and respectfully refers all questions of law to this honorable court.

7. Denies each and every allegation contained in the paragraphs or subdivisions of the Complaint designated "SEVENTH", "EIGHTH" and "NINTH".

**ANSWERING THE SECOND CAUSE OF ACTION ON
BEHALF OF THE PLAINTIFF SOPHIA DIOGENE FOR LACK OF
INFORMED CONSENT**

8. As to the paragraph of the Complaint designated "TENTH", answering defendant repeats, reiterates and realleges each and every denial heretofore made with respect to paragraphs "FIRST" through "NINTH" inclusive, with the same force and effect as if fully set forth at length herein.

9. Denies each and every allegation contained in the paragraph or subdivision of the Complaint designated "ELEVENTH" in the form alleged.

10. Denies each and every allegation contained in the paragraphs or subdivisions of the Complaint designated "TWELFTH", "THIRTEENTH" and "FOURTEENTH".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

11. Any damages which may have been sustained by the plaintiff were contributed to in whole or in part by the culpable conduct of the plaintiff, pursuant to Section 14-A, CPLR.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

12. Any damages which may have been sustained by the plaintiff were contributed to in whole or in part by the culpable conduct of third parties not under the control of answering defendant.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

13. Pursuant to CPLR 4545(c), if it be determined or established that plaintiff has received or with reasonable certainty shall receive the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, and that the same shall be replaced or indemnified, in whole or in part from any collateral source such as insurance (except for life insurance), social security (except for those benefits provided under title XVIII of the Social Security Act), workers' compensation or employee benefit programs (except such collateral source entitled by law to liens against any recovery of the plaintiff), then and in that event answering defendants hereby plead in mitigation of damages the assessment of any such cost or expense as a collateral source in reduction of the amount of the award by such replacement or indemnification, minus an amount equal to the premiums paid by the plaintiff for such benefits for the two year period immediately preceding the accrual of this action and minus an amount equal to the projected future cost to the plaintiff of maintaining such benefits and as otherwise provided in CPLR 4545(c).

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

14. The injuries and damages alleged, all of which are denied by the answering defendant, were caused by the intervening, interceding and superseding acts of third parties not under the control of answering defendant.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

15. The plaintiff failed to mitigate her damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

16. That the action against the answering defendant cannot be prosecuted due to the plaintiff's failure to name and likewise prosecute an indispensable party to this litigation.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

17. The lawsuit was not commenced by the plaintiff within the time prescribed by law, and the plaintiff, therefore, is barred from recovery, pursuant to Section 214A, CPLR.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

18. Answering defendant is entitled to limitation of liability pursuant to Article 16 of the CPLR.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

19. The Complaint fails to state a cause of action upon which relief may be granted.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

20. If the plaintiff sustained damages as alleged, such damages occurred while the plaintiff was engaged in an activity into which she entered, knowing the hazard, risk and danger of the activity and she assumed the risks incidental to and attending the activity.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

21. Defendant asserts Section 15-108 of the General Obligations Law and will ask the Court that the defendant be entitled to a set-off for any settlements, releases or discontinuances.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

22. The defendant is not liable to the plaintiff as the plaintiff's actions were the sole proximate cause of the alleged occurrence.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

23. If plaintiff is entitled to recover damages for loss of earnings or impairment of earning ability as against defendant by reason of the matters alleged in the Complaint, liability for which is hereby denied, then pursuant to CPLR 4546 the amount of damages recoverable against answering defendant, if any, shall be reduced by the amount of federal, state and local income taxes which the plaintiff would be obligated by law to pay.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

24. With respect to any causes of action set forth in plaintiff's Complaint based upon answering defendants' failure to obtain an informed consent, answering defendants intend to plead each and every defense as may be applicable and set forth and provided by Public Health Law, Section 2805(d).

WHEREFORE, answering defendant demands judgment dismissing the Complaint together with the costs and disbursements of this action

Dated: New York, New York
March 18, 2024

Yours etc.,

MORRIS DUFFY ALONSO FALEY & PITCOFF

Robert Reilly

By: _____

ROBERT REILLY
Attorneys for Defendant
NASSAU-QUEENS ENDODONTICS PC
Office and Post Office Address
101 Greenwich Street, 22nd Floor
New York, New York 10006
T: (212) 766-1888
F: (212) 766-3252
Our File No.: (AP) 77105

TO:
CHIANESE & REILLY LAW, PC
Attorneys for Plaintiff
100 North Village Ave, Suite 29
Rockville Centre, NY 11570
(516) 599-2020

SHEELEY LLP
Attorneys for Defendant
JESSICA KAGAN, D.D.S.
100 Wall Street, 19th Floor
New York, NY 10005
(646) 650-5952

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.